

1. Applicant's Name: [REDACTED]**a. Application Date:** 24 January 2024**b. Date Received:** 29 January 2024**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to honorable, change in their narrative reason, and changes to their separation and reentry codes.

b. The applicant seeks relief contending, they came from Iraq with their grandmother dying and their ex-spouse divorcing them. The applicant was falsely accused of having tested positive for marijuana. They went to the chaplain and their commander, as 1SG wanted them out on purpose.

c. Board Type and Decision: In a telephonic appearance conducted on 9 September 2024, and by a 5-0 vote, the board determined the discharge is inequitable based on the applicant's Anxiety Disorder outweighed the basis for separation – wrongfully used marijuana. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a, changed the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The board voted not to change the reentry code.

Please see Board Discussion and Determination of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12C (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 26 March 2009

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 20 February 2009

(2) Basis for Separation: Wrongful use of marijuana

(3) Recommended Characterization: General (Under Honorable Conditions)

(4) Legal Consultation Date: Waived counsel on 20 February 2009

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 4 March 2009 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 31 January 2007 / 3 years, 10 weeks

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / 98

c. Highest Grade Achieved / MOS / Total Service: E-4 / 13D1P Field Artillery
Automated Tactical Data System Specialist (FAATDS) / 2 years, 1 month, 26 days

d. Prior Service / Characterizations: 3 years, 22 days

(1) Initial Active Duty Training - IADT (23 May – 30 July 2004) / Honorable

(2) Army National Guard - ARNG (9 January 2004 – 30 January 2007) /
Honorable

(3) Advanced Individual Training - AIT (8 June – 22 September 2005) /
Honorable / Concurrent Service

e. Overseas Service / Combat Service: SWA / Iraq (5 September 2007 – 15 July
2008)

f. Awards and Decorations: ARCOM, AAM, NDSM, GWOTSM, ICM-CS, ASR,
OSR, PB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 31 January 2007, the applicant reenlisted in the Regular Army for 3 years and 10 weeks as a PFC (E-3), with 3 years and 22 days of Army National Guard prior service and 2 months and 8 days of prior active duty).

- The Enlisted Record Brief provides on 17 August 2008, they were promoted to SPC (E-4).
- They served in Iraq, in support of Operation Iraqi Freedom (OIF) for over ten months (5 September 2007 – 15 July 2008).
- On 29 January 2009, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

(2) On 22 January 2009, the Army Substance Abuse Program (ASAP) Manager, notified the command of the applicant's positive urinalysis for marijuana collected on 13 January and provided the required actions IAW AR 600-85, such as notifying local CID, referring the Soldier to Behavioral Health for evaluation/assessment within five duty days; initiating their FLAG; and to comply with regulatory guidance AR 635-200.

(3) On 30 January 2009, the applicant accepted nonjudicial punishment in violation of Article 112a, UCMJ, for wrongful use of marijuana. The punishment imposed

a reduction to PVT (E-1); forfeiture of \$699.00 pay per month for two months, suspended, to be automatically remitted if not vacated before 12 August 2009; extra duty for 45 days; and restriction to the limits imposed by the commander for 45 days. They did not appeal.

(4) On 11 February 2009, the applicant completed a medical history and examination at Physical Examination Section – DODH, Womack Army Medical Center (WAMC), NC, providing block 29 of their history was left blank and block 30a, the examiner lists no diagnoses or recommendations. The applicant was seen for a medical examination and was qualified for service.

(5) On 19 February 2009, they completed a separation mental status evaluation at WAMC Behavioral Health, providing the applicant was mentally responsible for their behavior, can distinguish right from wrong, and possesses sufficient mental capacity to participate in the proceedings. There was no evidence of emotional or mental disorder of psychiatric significance that would warrant disposition through medical channels. They are psychiatrically cleared for any administrative action deemed appropriate by command.

(6) On 20 February 2009, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), for having wrongfully used marijuana and recommended a General (Under Honorable Conditions) characterization of service.

(a) The applicant elected to waive their rights to legal consultation and elected not to submit a statement on their behalf. The battalion commander concurred with the company commander's recommendation.

(b) On 4 March 2009, the separation approval authority approved the discharge under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), with a General (Under Honorable Conditions) characterization of service.

(7) On 11 March 2009, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged IAW AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), on 26 March 2009, with 5 years, 2 months, 18 days of total service. The applicant provided their physical signature and has not completed their first full term of service.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** The applicant indicated "Disability" on their application and the Case Management Division (CMD) requested medical documents in support of their health condition(s) on 27 March 2024, however, additional documentation has not been received.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Application for Correction of Military Record

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of

service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation

applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse).

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement. ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without

Leave) of the UCMJ.

(2) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

h. Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 112a (wrongful use of a schedule II controlled substance, marijuana) states in the subparagraph, the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement for five years.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests Honorable, change in their narrative reason, and changes to their separation and reentry codes. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The available evidence provides the applicant enlisted in the RA as a PFC, with 3 years and 22 days of prior ARNG service. They completed over ten months in Iraq in support of OIF, and served for 1 year, 11 months, and 28 days, prior to having been flagged for adverse action.

(1) Six months post redeployment, the applicant tested positive for marijuana and accepted nonjudicial punishment, which imposed a reduction to PVT, along with extra duty. The company commander-initiated separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), received concurrence from the battalion commander. The applicant elected to waive their rights to counsel and elected not to submit a statement on their behalf. Although the separation approval authority approved their discharge IAW AR 635-200, Chapter 14-12c, misconduct (serious offense), the applicant was discharged IAW AR 635-200,

Chapter 14-12c (2), Drug Abuse, with a General (Under Honorable Conditions) characterization of service.

(2) They served 2 years, 1 month, and 26 days of their 3 year-10 week contractual obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. The applicant submitted the following additional document(s): N/A

b. The applicant presented the following additional contention(s): N/A

c. Counsel / Witness(es) / Observer(s): N/A

10. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnosis: Anxiety Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** There is no known in-service diagnoses but post-wervice diagnosis was based on in-service symptoms.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that during the PA, the applicant admitted to using. Accordingly, the applicant's service connected Anxiety Disorder, based on anxiety symptoms in-service fueling substance use to treat symptoms, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Anxiety Disorder outweighed the basis for separation - wrongfully used marijuana.

b. Response to Contention(s): The applicant seeks relief contending, they came from Iraq with their grandmother dying and their ex-spouse divorcing them. The applicant was falsely accused of having tested positive for marijuana. They went to the Chaplain and their commander, as 1SG wanted them out on purpose. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Anxiety Disorder outweighing the applicant's misconduct - wrongfully used marijuana.

c. The board determined the discharge is inequitable based on the applicant's Adjustment DO outweighing the basis for separation – wrongfully used marijuana. Thus, relief is warranted.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable because the applicant's Adjustment Disorder outweighed the basis for separation – wrongfully used marijuana. Thus, the prior characterization is no longer appropriate.

(2) The board voted to change the applicant's reason for discharge to Misconduct (Minor Infractions) under the same rationale, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

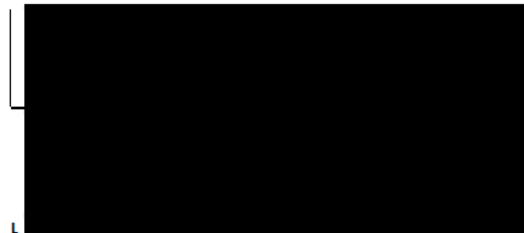
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order:** Yes
- b. Change Characterization to:** Honorable
- c. Change Reason / SPD code to:** Misconduct (Minor Infractions)/JKN
- d. Change RE Code to:** No Change
- e. Change Authority to:** AR 635-200, paragraph 14-12a

Authenticating Official:

9/20/2024



AWOL – Absent Without Leave
 AMHRR – Army Military Human
 Resource Record
 BCD – Bad Conduct Discharge
 BH – Behavioral Health
 CG – Company Grade Article 15
 CID – Criminal Investigation
 Division
 ELS – Entry Level Status
 FG – Field Grade Article 15

GD – General Discharge
 HS – High School
 HD – Honorable Discharge
 IADT – Initial Active Duty Training
 MP – Military Police
 MST – Military Sexual Trauma
 N/A – Not applicable
 NCO – Noncommissioned Officer
 NIF – Not in File
 NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
 OBH (I) – Other Behavioral
 Health (Issues)
 OMPF – Official Military
 Personnel File
 PTSD – Post-Traumatic Stress
 Disorder
 RE – Re-entry
 SCM – Summary Court Martial
 SPCM – Special Court Martial

SPD – Separation Program
 Designator
 TBI – Traumatic Brain Injury
 UNC – Uncharacterized
 Discharge
 UOTHC – Under Other Than
 Honorable Conditions
 VA – Department of Veterans
 Affairs